

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5289 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR. K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL NATVARBHAI PRABHUDAS

Versus

SPECIAL LAND ACQUISITION OFFICER NO. 1

Appearance:

MR KM SHETH for Petitioners

MR KM MEHTA, A.G.P. for Respondent

CORAM : CHIEF JUSTICE MR. K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 29/07/98

ORAL JUDGEMENT

(Per : K.G.Balakrishnan, C.J.) :-

Rule. Mr. K.M.Mehta, learned Assistant Government Pleader waives service thereof.

At the request of learned Counsel appearing for the parties, the petition is heard today.

The lands belonging to the petitioners were acquired by the State for public purpose. The lands are situated in Nadoliya village of Kadi Taluka in Mehsana District. The award was passed on 14.9.1992. The petitioners were not present at the time of passing the award and they received notice under section 12(2) of the Land Acquisition Act, 1894 ("Act" for short). On 25.5.1993, according to the petitioners, they filed reference application seeking enhancement of compensation on 11.6.1993. The case of the petitioners is that the respondent-Land Acquisition Officer rejected the reference application on the ground that these petitioners had accepted award and, therefore, under section 18 of the Land Acquisition Act there cannot be any reference to the District Court for enhancement of compensation. The petitioners challenge the order passed by the respondent on 4.8.1993.

2. We have heard the petitioners' learned Counsel and the learned A.G.P. for the respondent.

3. The petitioners' contention is that they had received compensation and raised oral objection to the effect that the compensation amount was inadequate. After receiving notice issued under section 12 of the Act, the petitioners filed reference application within the period of limitation and, therefore, it is contended that the respondent was bound to refer the case for the purpose of deciding the question regarding enhancement of compensation. Counsel for the petitioners contended that even if the petitioners had not raised any protest as such, reference application is filed within time and that is sufficient to indicate that they had not accepted the award. Section 18 of the Land Acquisition Act reads as under :-

"18. Reference to Court:(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the

grounds on which objection to the award is taken:

Provided that every such application shall be made:-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award. whichever period shall first expire"

4. From the above Section, it is clear that any interested person, who has not accepted the award, can make written application for reference. If the interested person is not present at the time when the award is made or he has received notice under sec. 12(2) of the Act, he has to submit his application within six weeks and in other cases, he shall submit application within a period of six months from the date of Collector's award. In the instant case, it is found that the petitioners submitted application within the stipulated time. The question is as to whether the petitioners have accepted the award or not. According to the petitioners, they have not accepted the award. Even though they have received compensation from the respondent, according to the petitioners' Counsel, the fact that they had filed application under section 18 of the Act by itself is indicative of the fact that they have not accepted the award. The petitioners' Counsel placed reliance on the decision of the Supreme Court in Ajit Singh and others vs. State of Punjab and others, 1994 LACC, 365. The Supreme Court observed in para-6 of the judgment that, ".....Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation". In the case of Bakshi Ram Jain vs. State of Haryana, 1997(2) LACC, 590, decided by the Division Bench of Punjab and Haryana High Court, the claimants had demanded land value at Rs.26/- per sq.yard. The Collector had awarded compensation at Rs. 1.60. The land owners filed application for reference under section 18. The Collector rejected the application on the ground that the land owners had received compensation without protest. The Court held that the fact that they had

claimed larger amount than what had been granted by the respondents, itself is indicative of the fact that they had not accepted the awarded amount. It was observed as under :-

"When the claimants have put their claim under Section 9 of the Act for getting the market value of their land assessed at Rs.26/- per sq.yard while the Collector awarded a compensation hardly at Rs.1.60 there would be no reason to believe that in ordinary course of conduct, reasonable or prudent person would not protest. One is not expected to accept the same without any protest or raising hue and cry for just compensation. Thus in totality of the circumstances as referred to above, we are of the considered view that in facts and circumstances, protest was lodged with the respondents while accepting the compensation and the claimants cannot be deprived of their right of reference under Section 18 of the Act for getting the market value of their land assessed from the District Judge for the reason of their being not protestees at the time the award was given by the Land Acquisition Collector."

5. In the instant case, the petitioners had claimed Rs.20/- per sq.meter and the Land Acquisition Officer had awarded Rs.1.29 ps. per sq.meter and the petitioners had filed reference application immediately i.e. within a period of two weeks from the date of receipt of the notice. All these facts indicate that they had not accepted the award and they had objection to the quantum of the amount awarded by the Land Acquisition officer. Merely because the petitioners had accepted the amount, it cannot be assumed that they had accepted the award as contemplated under section 18 of the Act. Therefore, the view taken by the Collector in not referring the matter to the District Court is not sustainable and we set aside the order dated 4.8.1993 (Annexure-A to the petition) passed by the Collector. The Collector is directed to refer the matter to the appropriate District Court as contemplated under section 18 of the Act within a period of one month from the date of receipt of copy of this judgment. Rule is made absolute to the aforesaid extent

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(Patel)